

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sonia Landino	Team: Squad #15	CCRB Case #: 201507068	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/19/2015 8:00 AM	Location of Incident: Inside § 87(2)(b)	Precinct: 40	18 Mo. SOL 2/19/2017	EO SOL 2/19/2017	
Date/Time CV Reported Fri, 08/21/2015 2:41 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/21/2015 2:41 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			044 PCT
2. An officer			E S U
3. SGT Robert Clark	3964	936358	044 PCT
4. INS Brian Mullen	00000	906885	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Spina	15556	953436	044 PCT
2. DTS Albert Romano	4279	940667	ESS 06
3. DTS Thomas Longa	07623	919315	E S U
4. DTS Patrick Barry	00249	917283	E S U
5. SGT Michael Gargan	01154	906311	E S U
6. DTS Terry Avent	01029	932280	E S U
7. DTS Lenno Hendricks	04817	925441	E S U

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers entered and searched § 87(2)(b) in the Bronx.	
B. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
C. An officer	Force: An officer used physical force against § 87(2)(b)	
D.SGT Robert Clark	Abuse: Sgt. Robert Clark failed to show the search warrant to § 87(2)(b) and § 87(2)(b)	
E.INS Brian Mullen	Abuse: Insp. Brian Mullen failed to show the search warrant to § 87(2)(b) and § 87(2)(b)	

Case Summary

On August 19, 2015, at approximately 8 a.m., officers from the Emergency Services Unit and the 44th Precinct entered and searched § 87(2)(b) in the Bronx pursuant to search warrant § 87(2)(b) (see Board Review 23) (**Allegation A**). The investigation identified Det. Albert Romano, Det. Thomas Longa, Det. Patrick Barry, Det. Terry Avent, Det. Lenno Hendricks, and Sgt. Michael Gargan of the Emergency Services Unit and Insp. Brian Mullen, Sgt. Robert Clark, and PO Joseph Spina of the 44th Precinct as having participated in the search warrant's execution at the incident location. During the entry into § 87(2)(b) and § 87(2)(b)'s bedroom, an unidentified male officer from the Emergency Services Unit allegedly told § 87(2)(b) "Shut the fuck up, how about that" (**Allegation B**). After the alleged discourtesy was made against § 87(2)(b) the same unidentified male officer from the Emergency Services Unit allegedly grabbed § 87(2)(b) around his neck with one hand, pushed him towards the bedframe, handcuffed him, and pushed him onto a bed (**Allegation C**). While officers were searching inside the apartment, § 87(2)(b) and § 87(2)(b) requested to see the search warrant from Sgt. Clark and Insp. Mullen, but the search warrant was never presented to them (**Allegation D and Allegation E**). § 87(2)(b) and § 87(2)(b)'s son, § 87(2)(b) § 87(2)(b) was arrested and transported to the 44th Precinct after marijuana and drug paraphernalia were procured from within § 87(2)(b) § 87(2)(b)'s bedroom. No other civilians were arrested and all of the officers left the apartment after § 87(2)(b) § 87(2)(b)'s arrest. § 87(2)(b) § 87(2)(b) was released later that same day with a desk appearance ticket for § 87(2)(b).

There was no video footage for this incident.

Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) accepted mediation during their CCRB interviews that were conducted on August 25, 2015. Since the investigation was unable to identify the subject officer of the alleged discourtesy, the case could not be referred to the Mediation Unit.
- On November 13, 2015, a request was made to determine if a Notice of Claim was filed in regards to this incident. Confirmation from the New York City Office of the Comptroller will be added to the case file upon receipt (see Board Review 26).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Civilian and Officer CCRB Histories

- Sgt. Clark has been a member of the service for 10 years and has 4 CCRB allegations, none of which have been substantiated § 87(2)(g)
- Insp. Mullen has been a member of the service for 21 years and has 20 CCRB allegations, none of which have been substantiated § 87(2)(g)
- This is § 87(2)(b) and § 87(2)(b)'s first CCRB complaint (see Board Reviews 2 and 3)

Findings and Recommendations

Explanation of Subject Officer Identification

The ESU Tactical Plan (see Board Review 20) and the 44th Precinct's Pre and Post Search Warrant Form (see Board Review 24) identify PO Alexis Dejesus of the 44th Precinct as the requesting officer for the search warrant, Insp. Mullen as the executing supervisor, Sgt. Clark as the officer who requested ESU and was their Field Intelligence Officer, and Sgt. Gargan as the entry supervisor. Aside from the aforementioned officers, additional unidentified officers from the 44th Precinct also participated in the entry and search. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

During § 87(2)(b)'s sworn statement, she described the officer you used profanity against her and had also used force against § 87(2)(b) as being a 5'7" to 6' tall, muscular white male in an ESU uniform who held the ram and did not have a gun drawn. Based on the ESU Tactical Plan and the nine listed ESU officers' pedigree descriptions, all of the ESU officers were males, six of the nine were white males, and their heights ranged from 5'10" to 6'4" tall. According to the ESU Tactical Plan, Det. Romano, Det. Longa, and Det. Barry were the officers equipped with the entry tools, which would have included a ram. Interviews were conducted with the aforementioned officers and although they each confirmed they were equipped with entry tools based on their review of the tactical plan, none of them could specifically recall this incident or having used a ram during this search warrant. Additionally, the interviewed ESU officers also indicated that based on the type of door of the § 87(2)(b)'s apartment, which was noted in the tactical plan, they would not have used the ram. Sgt. Gargan also indicated that he did not recall an officers using a ram or having to forcibly enter any rooms during the incident. Det. Romano, Det. Longa, Det. Barry, and Sgt. Gargan denied verbally interacted with any civilians inside the apartment and did not hear an officer use profanity against the civilian. In order to assist in the identification of this subject officer, § 87(2)(b) participated in a photo viewing on October 20, 2015, at which time she did not positively identify any of the officers that were listed on the ESU Tactical Plan. However, after her photo viewing, § 87(2)(b) indicated that the ESU officer who used profanity against her had actually been one of the officers who had a pistol pointed at her and was not holding the ram. Det. Avent and Det. Hendricks were then interviewed as they were the only two ESU officers equipped with pistols. Det. Avent and Det. Hendricks denied using profanity and did not overhear an officer use profanity against any civilians on the incident date. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

According to § 87(2)(b) and § 87(2)(b) they requested to see the search warrant from two officers. They indicated that the first officer was the only Black male present during the incident. § 87(2)(b) and § 87(2)(b) described the Black male as being bald, in his 20's or 30's, between 5'8" to 6'2" tall with a muscular build, and dressed in uniform. This description matches the pedigree of Sgt. Clark who is § 87(2)(b)-old, 6' tall, 210-pound Black male who is bald and acknowledged being asked to show the search warrant by § 87(2)(b). The second officer § 87(2)(b) and § 87(2)(b) indicated that had asked to see the search warrant from was an

older-looking male officer they identified as a lieutenant because he wore a white shirt. However, § 87(2)(b) and § 87(2)(b) described two officers who wore white shirts as being present during the incident, but they only verbally interacted with one of them. Insp. Mullen is the only listed officer listed on the ESU Tactical Plan and the Pre and Post Warrant Form that possesses the rank to wear a white shirt. Sgt. Clark and Sgt. Gargan identified Insp. Mullen as being present inside the apartment after ESU gained entry and this was corroborated by Insp. Mullen statement, but none of the interviewed officers recalled or identified the presence of a second officer with the rank of lieutenant or above. § 87(2)(g)

Allegations Not Pleaded

- § 87(2)(g)

Allegation A –Abuse of Authority: Officers entered and searched § 87(2)(b) in the Bronx.

§ 87(2)(b) filed this complaint with the CCRB on August 21, 2015, two days after the incident occurred. § 87(2)(b) and § 87(2)(b) provided their sworn statements on August 25, 2015, which were largely consistent with each other in regards to how the ESU officers gained entry into their bedroom via the use of a ram.

New York State Criminal Procedure Law §690.50 states that officers may forcibly enter a location and search the premises pursuant to a valid search warrant (see Board Review 27).

§ 87(2)(g), § 87(2)(b)

Allegation B – Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation C – Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that immediately after the ESU officers gained entry into her bedroom with their guns pointed at her, she repeatedly asked the officers what was happening. In response, a 5’7” to 6’ tall, muscular white male in an ESU uniform allegedly had told her, “Shut the fuck up, how about that.” § 87(2)(b) also alleged that the same unidentified ESU officer who used profanity against her was also the officer who grabbed § 87(2)(b) around his neck with one hand, pushed him towards the bedframe, handcuffed him with the assistance of another unidentified ESU officer, and pushed § 87(2)(b) onto a bed. § 87(2)(g)

§ 87(2)(g). After her photo viewing, § 87(2)(b) indicated that the ESU officer who used profanity against her and force against § 87(2)(b) had actually been one of the officers who had a pistol pointed at her and did not hold the ram.

§ 87(2)(g) During his sworn statement, § 87(2)(b) specified that he never heard any officers use profanity against him or § 87(2)(b) § 87(2)(b) was standing not too far away from § 87(2)(b) when the ESU officers had entered their bedroom, so it is highly unlikely that he would not have heard such a discourtesy being made towards his wife while officers had their guns pointed at them. Additionally, § 87(2)(b) stated that he was directed to face the wall and an unidentified officer took his hands down from the wall and handcuffed him. After he was handcuffed, § 87(2)(b) sat down on his bed of his own free will.

§ 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Allegation D – Abuse of Authority: Sgt. Robert Clark failed to show the search warrant to

§ 87(2)(b) and § 87(2)(b)

Allegation E – Abuse of Authority: Insp. Brian Mullen failed to show the search warrant to

§ 87(2)(b) and § 87(2)(b)

According to § 87(2)(b) Sgt. Clark asked him if there were any drugs or guns inside the apartment. § 87(2)(b) confirmed that he did not have any drugs or weapons in the apartment and asked Sgt. Clark what was going on. In response, Sgt. Clark stated that detectives would arrive and show him a warrant. Several minutes later, Insp. Mullen entered the bedroom and § 87(2)(b) asked him if there was a search warrant and what the warrant was for. § 87(2)(b) could not recall if Insp. Mullen had provided a response to his request. Later when § 87(2)(b) was sitting inside the living room, he asked when he would be shown the search warrant as a general question and did not direct it to any particular officer. In response, Insp. Mullen reiterated that detectives would arrive and they would produce the warrant. By the conclusion of the incident, § 87(2)(b) was never shown the search warrant.

§ 87(2)(b) stated that while she and § 87(2)(b) were inside their bedroom, Insp. Mullen informed them that the officers had a no-knock search warrant. § 87(2)(b) and § 87(2)(b) asked Insp. Mullen what the search warrant was for and requested to see the search warrant. Insp. Mullen informed them that detectives would arrive and speak to them. While inside the living room, § 87(2)(b) asked Insp. Mullen and Sgt. Clark to show him the search warrant and Insp. Mullen stated that he would get the search warrant in the mail. As the officers were leaving the apartment with § 87(2)(b) § 87(2)(b) asked to see the search warrant as a general question and Sgt. Clark told her that the officers would give the search warrant to § 87(2)(b) and he could bring it back home after his release.

At the onset of Sgt. Clark's interview, he stated that he did not have the search warrant in his possession while inside the incident location, but indicated that the search warrant was at the 44th

Precinct stationhouse. Sgt. Clark acknowledged being present inside the bedroom with § 87(2)(b) and § 87(2)(b) and informing them that the officers had a search warrant. He could not recall if § 87(2)(b) or § 87(2)(b) had made any statements after being informed of the search warrant, but he did admit that § 87(2)(b) had requested to see the search warrant from him once the civilians were all inside the living room. Sgt. Clark told § 87(2)(b) that the search warrant was at the stationhouse and he could go to the stationhouse afterwards to see it. § 87(2)(b)'s girlfriend § 87(2)(b), had also requested to see the search warrant from Sgt. Clark, and he reiterated the same information he provided to § 87(2)(b). During the incident, Sgt. Clark believed Insp. Mullen had spoken with the civilians, but he could not detail their conversations. Sgt. Clark believed that § 87(2)(b)'s arresting officer, PO Spina, had shown § 87(2)(b) § 87(2)(b) a copy of the search warrant after he was transported to the 44th Precinct stationhouse.

Insp. Mullen specified that it was Sgt. Clark's responsibility to possess copies of the search warrant. When Insp. Mullen was asked if he had a copy of the search warrant, he acknowledged to having a copy on the day of the search warrant's execution. Insp. Mullen stated that he had gone into all of the rooms inside the apartment and may have spoken to § 87(2)(b) about the search warrant, but he did not any verbal interactions with other civilians within the apartment. Insp. Mullen denied being asked by any civilians to present a copy of the search warrant, but indicated that he heard Sgt. Clark tell an unidentified male civilian that he would provide the search warrant to him after being asked to do so by the unidentified male civilian.

NYPD Patrol Guide Procedure 212-105 requires that, "The members of the service executing the search warrant shall, when able to do so safely, show a copy of the search warrant to any of the occupants of the premises" (see Board Review 1).

§ 87(2)(g)
[REDACTED]

Squad: 15

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date